IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 10 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

HH RAJMATA GULABKUNVERBA SAHEB OF NAWANAGAR TRUST

Appearance:

1. WEALTH TAX REFERENCE No. 10 of 1986
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue the following two questions have been referred to this Court under the provisions of Section 27 (1) of the Wealth Tax Act, 1957, (hereinafter referred to as "the Act"), by the Income Tax Appellate Tribunal, Ahmedabad Bench `A' for opinion of this Court.

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee trust was a non-discretionary trust and therefore, the same could not be assessed under the provisions of Section 21 (4) of the Wealth Tax Act, 1957?"

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee trust was entitled to exemption under Section 5 (1) (xxxiii) of the Wealth Tax Act, 1957 in respect of the shares hold by it?"

2. Learned advocate Shri Akil Kureshi has appeared for the revenue whereas nobody has appeared for the assessee though served.

3. Upon perusal of the order passed by the Tribunal it is very clear that the assessee was held to be a non-discretionary trust or a specific trust under the proceedings initiated under the Income Tax Act, 1961. Meaning of the term "Discretionary Trust" is same under the provisions of the Act and the Income Tax Act, 1961. Once under the provisions of the Income Tax Act, the revenue has treated the assessee trust as a specific or non-discretionary trust, in our opinion the Tribunal was absolutely right in coming to the conclusion that different view should not have been taken by the revenue authorities in the proceedings initiated under Wealth Tax Act, 1957. It is pertinent to note that the trust deed which was interpreted by the authorities under the Income Tax Act, 1961, was the only trust deed which was interpreted by the authorities under the Act, for the purpose of determining whether the assessee trust is a discretionary trust. One document cannot be interpreted by two different authorities for the purpose of two

different Acts. For the above reason also we are of the view that the Tribunal was justified in coming to the conclusion that the assessee trust is a non-discretionary trust. In the circumstances, we answer the first question in the affirmative i.e. in favour of the assessee and against the revenue.

4. So far as the second question is concerned, in our opinion this is a consequential question which is referred to this Court. In view of the fact that the trust is a specific trust, the provisions of Section 21 (4) will not apply to the assessee trust and therefore the assessee trust would be entitled to the exemption under the provisions of Section 5 (1) (xxiii) of the Wealth Tax Act, 1957. Thus the second question is also required to be answered in the affirmative i.e., in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

24.7.2001. (A.R. Dave, J.)

(D.A. Mehta, J.)
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